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March 9, 2006

**DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: October 27, 2005

Case Number: TSO-0304

This Decision concerns the eligibility of XXXX XXXXXX XXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A Department of Energy (DOE) Operations Office denied the individual's request for an access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual is eligible to hold an access authorization. As set forth in this Decision, I have determined that the individual should be granted a security clearance.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

In this instance, the individual requested a security clearance from DOE after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being denied pending the resolution of certain derogatory information that created doubt regarding his eligibility. This derogatory information is described in a Notification Letter issued to the individual on August 17, 2005, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections h and j. More specifically, the Notification Letter alleges that the individual has: 1) "[a]n illness or mental condition which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability," and 2) "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. §§ 710.8(h) and (j) (Criterion H and Criterion J, respectively). The bases for these findings are summarized below.

The Notification Letter states that the individual was evaluated by a DOE consultant-psychiatrist (DOE Psychiatrist) who diagnosed the individual with Alcohol Dependence, with Physiological Dependence, in Early Full Remission. According to the DOE Psychiatrist's report, this is a mental condition that causes or may cause a significant defect in the individual's judgment or reliability. The DOE Psychiatrist further determined that the individual did not present adequate evidence of rehabilitation or reformation. The Notification Letter also indicates that the individual was arrested for Driving While Intoxicated (DWI) in November 2000, and that during his first marriage the individual had marital difficulties caused by his drinking, which contributed to his eventual divorce.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on October 27, 2005, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On October 31, 2005, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, I established a hearing date. At the hearing, the DOE Counsel called the DOE Psychiatrist as the sole witness on behalf of DOE Security. Apart from testifying on his own behalf, the individual called his wife, his mother, his cousin, his Alcoholics Anonymous (AA) sponsor, his supervisor, and his counselor. The transcript taken at the hearing will be hereinafter cited as "Tr.". Documents submitted by the DOE Counsel and the individual during this proceeding constitute exhibits to the hearing transcript and will be cited as "DOE Exh." and "Ind. Exh." respectively.

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual was hired by a DOE contractor in July 2004, and soon thereafter sought to obtain a DOE security clearance. During the background investigation of the individual, however, DOE Security obtained derogatory information relating to the individual's finances and use of alcohol. DOE Security therefore conducted a Personnel Security Interview (PSI) of the individual on December 14, 2004 (PSI I) and on February 10, 2005 (PSI II), to possibly resolve these matters. Due to unresolved concerns regarding the individual's use of alcohol, the individual was referred to the DOE Psychiatrist who reviewed the individual's security file and performed a psychiatric evaluation of the individual on April 18, 2005. The individual's history of alcohol use, as revealed during the two PSI's and psychiatric interview, is described below.

The individual did not drink in high school, and consumed very little during the one year that he attended college. The individual dropped out of college after marrying his girlfriend who was pregnant with their child. The individual then decided to join the military where he began to drink more frequently, particularly after the death of his father who committed suicide in 1989 without explanation. From 1989 to 1992, the individual admittedly drank heavily. The individual drank three to four beers on a daily basis and drank to intoxication on many weekends. The individual admitted that he came home late in an intoxicated state on numerous occasions and sometimes did not come home at all because of his drinking. This placed a considerable strain on the individual's marriage and he had frequent arguments with his wife about his drinking.

After leaving the military in 1992, the individual began to cut back on his drinking. The individual reported that he typically drank no more than two to three beers on any given occasion, and an average of a 12-pack of beer a week. Nonetheless, the individual's wife continued to express concerns about the individual's drinking and their marriage ended in divorce in 1996. The individual stated that the divorce was largely the result of his discovery that his wife had an extramarital affair. During the divorce proceedings, however, the individual's wife told the court that the individual's excessive use of alcohol was the reason for the divorce and that the individual sometimes abused her after consuming alcohol. The divorce decree granted joint custody of their two children, but stipulated that the individual could not drink in the presence of his children. In response to the court's decree, the individual stopped drinking for six months but then resumed drinking at the same level as prior to the divorce. The individual married his second and present wife in 1998.

On November 5, 2000, the individual was arrested on a charge of DWI. On the day of the arrest, the individual returned home with a deer he shot on a hunting trip. The individual drank approximately six beers while skinning and carving the deer for storage in his freezer. Later in the process of preparing the deer for storage, the individual was sent to the store by his wife to buy additional aluminum foil. A policeman observed the individual running through a stop sign and pulled the individual over. After initiating the stop, the policeman detected a strong odor of alcohol on the individual. The individual refused to take the field sobriety and breathalyzer tests, and was charged with DWI. Under the terms of the nine months probation that was imposed, the individual was ordered to visit a probation officer and refrain from the use of alcohol. However, the individual continued to consume alcohol during this time, limiting himself to one or two beers at home on any given occasion.

After completing probation, the individual's consumption of alcohol returned to its previous level, usually drinking one or two beers two to three times a week and a bit more on the weekend. The individual drank to intoxication on an average of three times a year. The final incident of intoxication occurred in December 2004, when the individual drank excessively at a Christmas gathering of his wife's family. Following this incident, his wife urged the individual to stop drinking. The individual agreed to stop drinking partly in response to this urging of his wife, but also because it had become clear to the individual that his drinking was a concern to DOE Security during PSI I, conducted earlier in December 2004. The individual has consumed no alcohol since that time.

As indicated above, the DOE Psychiatrist examined the individual on April 18, 2005. In her report dated April 28, 2005, the DOE Psychiatrist diagnosed the individual with Alcohol Dependence, In Early Full Remission, based upon diagnostic criteria set forth in *The Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR)*. According to the DOE Psychiatrist's report, this is a mental condition that causes, or may cause, a significant defect in judgment or reliability. The DOE Psychiatrist further opined in her report that the individual was without adequate evidence of reformation or rehabilitation. In this regard, the DOE Psychiatrist recommended as adequate evidence of rehabilitation that the individual remain abstinent for two years, and produce documented evidence of either: (1) attendance at Alcoholics Anonymous (AA) for a minimum of 100 hours, with a sponsor, at least twice a week over a one-year period, or (2) satisfactory completion of a minimum of 50 hours of a professionally-led alcohol treatment program for a minimum of six months, including aftercare for an additional 1½ years following completion of the program. As adequate evidence of reformation, the DOE Psychiatrist recommended sustained abstinence by the individual for two years if the individual completes one of the two treatment options described above, or three years of sustained abstinence if he does not.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual request for an access authorization should be granted since I conclude that such granting would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Criteria H & J; Mental Condition, Use of Alcohol

The individual admittedly indulged in heavy consumption of alcohol while enlisted in the military from 1989 to 1992. Tr. at 83-84; DOE Exh. 6 (DOE Psychiatrist's Report) at 7-8. While the individual reduced his consumption of alcohol after leaving the military, he now acknowledges that his first marriage ended in divorce in 1996 in part due to his habitual use of alcohol to excess. Tr. at 88; DOE Exh. 11 (PSI I) at 25, 50-52.

The individual's continued use of alcohol following his divorce and during his present marriage resulted in his arrest for DWI in November 2000. Tr. at 89; DOE Exh. 6 at 3. The individual consumed alcohol during the nine-month probationary period imposed by the court, in violation of his court order. DOE Exh. 6 at 8. The individual's continuing episodes of intoxication after that time led to his wife asking him to stop drinking after an occurrence at Christmas 2004. Tr. at 11-12. Based upon her interview of the individual and his reported history of alcohol use, the DOE Psychiatrist diagnosed the individual with Alcohol Dependence. DOE Exh. 6 at 14.

On the basis of the foregoing, I find that DOE Security properly invoked Criteria H and J in denying the individual's request for a security clearance. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. *See, e.g., Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995). As observed in these cases, an individual's excessive use of alcohol might impair his judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *Id.* Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation or reformation to mitigate the security concerns of DOE Security.

B. Mitigating Evidence

The individual stopped drinking in December 2004, giving him 13 months of sobriety at the time of the hearing. Tr. at 94, 105. The individual's sustained sobriety was corroborated by the testimony of his wife and mother. Tr. at 14-15, 53. The individual had been sober for four months when he was evaluated by the DOE Psychiatrist in April 2005, and the individual did not believe that he had a drinking problem at that time. Tr. at 91, 110. The individual therefore had not sought any form of alcohol treatment. However, upon receiving and reviewing the DOE Psychiatrist's report in August 2005, the individual recognized that perhaps he had been lying to himself, and made the decision to seek treatment. Tr. at 113.

In September 2005, the individual began attending AA meetings twice a week and also attending group therapy sessions conducted at his local Veterans Administration (VA). Tr. at 30, 96. Each week, the individual attends an AA meeting on Monday, his VA meetings on Tuesday and Wednesday, and then another AA meeting on either Thursday or Friday. Tr. at 105; Ind. Exh. 1 (record of AA attendance). Under this regimen, the individual had four months of treatment at the time of the hearing.

The individual's AA sponsor and VA counselor testified at the hearing. The individual's AA sponsor described the individual as an open and active participant in his AA meetings. Tr. at 38. The individual's VA counselor similarly described the individual as an active support group participant, who is committed to doing "the right thing" by maintaining his sobriety. Tr. at 129. The VA program is a rotational 26-week class involving group therapy and some one-on-one counseling. Tr. at 123. At the time of the hearing, the individual had completed 20 of the 26 classes in his rotation. Tr. at 96, 138. The VA counselor expressed his belief that the individual's heavy drinking while in the military was the result of the individual's traumatic experience when his father committed suicide,^{2/} and the individual's denial about that event. Tr. at 120-21. The VA counselor opined, however, that the individual is now over his denial and has "real high chances" of maintaining his sobriety. Tr. at 131.

I found the individual to be forthright and convincing in stating his intention to remain abstinent from alcohol. Tr. at 105, 109. The individual's wife and mother testified that they have seen positive changes in the individual, that the individual has expressed to them his commitment to maintaining his sobriety and that they are firmly supportive of him. Tr. at 18-20, 56-57. Finally, the individual's supervisor testified that the individual is a good and reliable worker, and that he has a reputation for honesty and trustworthiness among his co-workers. Tr. at 75-76.

The DOE Psychiatrist listened carefully to all of the testimony presented at the hearing. In her report, the DOE Psychiatrist recommended a year of AA, or a six-month treatment program, with two years of sobriety as adequate evidence of rehabilitation from the Alcohol Dependence she diagnosed with regard to the individual. *See* DOE Exh. 6 at 14-15; Tr. at 146-47. Based upon the evidence and testimony adduced at the hearing, however, the DOE Psychiatrist modified this standard, stating that: "I think that he deserves the benefit of the doubt. He has a good support system, which is rare. And he seemed to have a genuine intent of continuing this for his own sake. So I think that his risk for relapse at this time is low in the immediate future. So I'll be comfortable in waiving the time requirement." Tr. at 151. The DOE Psychiatrist then confirmed her opinion that the individual has achieved adequate evidence of rehabilitation having achieved 13 months of sobriety and four months of AA and VA treatment at the time of the hearing. Tr. at 152. Based

^{2/} The individual confirmed that he also now believes that his heavy drinking while in the military was his inability to cope with the suicide of his father. Tr. at 83-84. According to the individual, his father did not agree with his decision to drop out of college, get married and join the military, after his girlfriend had become pregnant. The individual testified that "I married a woman that he didn't approve of, and we all didn't get along . . . I chose my first wife over him." Tr. at 85. The individual's mother testified that the suicide of the individual's father "was very shocking to him . . . affected him mentally . . . [the individual] blamed himself for his dad's death." Tr. at 49.

upon the record of this case, and the present opinion of the DOE Psychiatrist, I am persuaded that the individual has adequately mitigated the concerns of DOE Security regarding his past use of alcohol and related diagnosis of Alcohol Dependence.

III. Conclusion

I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(h) and (j) in denying the individual's request for an access authorization. However, for the reasons set forth in this Decision, I have determined that the individual has adequately mitigated the associated security concerns. I therefore find that the individual should be granted an access authorization since I conclude that such approval would not endanger the common defense and security and would be consistent with the national interest. The Manager of the DOE Operations Office or the Office of Security may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: March 9, 2006